



Court Rules Participation In Post-Lawsuit Internal Investigation Is Protected Activity

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Although not particularly surprising, the Northern District of Illinois recently held that an employee who participated in an “internal investigation” regarding a former co-worker who had recently filed a race discrimination lawsuit was engaging in protected activity under Title VII. The employee was therefore allowed to move forward with his retaliation claim after he himself was terminated several months later.

The case, *Gomez v. Restaurant One Limited Partnership* is noteworthy because the Seventh Circuit has previously held that participating in a “purely internal investigation,” where no formal charge of discrimination has been made to a court or the EEOC (or its state equivalent) is *not* a statutorily protected activity. *Hatmaker v. Mem'l Med. Ctr.*, 619 F.3d 741, 747 (7th Cir. 2010). The Seventh Circuit has not, however, taken a position as to whether participating in an internal investigation in response to such a charge or lawsuit was protected.

In *Gomez*, a terminated restaurant employee filed a lawsuit claiming his employer had retaliated against him in part for participating in an internal investigation regarding a different claim of race discrimination involving a former co-worker who had filed a lawsuit. Relying on decisions from the Sixth and Eleventh Circuits, the Northern District of Illinois “conclude[d] that participating in an internal investigation commenced in response to an EEOC charge or Title VII lawsuit is a statutorily protected activity.” After finding protected activity, the court went on to find that the “cat’s paw” theory of liability precluded summary judgment for the employer.

The key takeaway here is that just because an employer is conducting an “internal investigation” does not mean that the employer is automatically shielded from a potential retaliation claim. Indeed, one can even foresee the

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line between “purely internal investigations” and investigations in response to a charge or lawsuit becoming blurred if an employee has threatened to file a charge, prompting an investigation.